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cited in this subpart are available. Advice of Counsel should be sought as to the availability of such immunities or exemptions; and

(b) Acquire directly and furnish to contractors as Government furnished property, equipment, material, or services when, in the opinion of the Head of the Contracting Activity—

(1) Such direct acquisition will result in substantial savings to the Government, taking into consideration any additional administrative costs;

(2) Such direct acquisition will not have a substantial adverse effect on the relationship between DOE and its contractor; and

(3) Such direct acquisition will not have a substantial adverse effect on the DOE program or schedules.

[65 FR 81009, Dec. 22, 2000. Redesignated and amended at 74 FR 36372, July 22, 2009]

970.2904 Contract clauses.

970.2904-1 Management and operating contracts.

(a) Pursuant to 48 CFR 29.401-4(b), the clause at 48 CFR 52.229-10, State of New Mexico Gross Receipts and Compensating Tax, is applicable to management and operating contracts that meet the three conditions stated. The contracting officer shall modify paragraph (b) of the clause to replace the phrase “Allowable Cost and Payment” with the phrase “Payments and Advances.”

(b) Contracting officers shall include the clause at 970.5229-1, State and Local Taxes, in management and operating contracts.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36373, July 22, 2009]

Subpart 970.30—Cost Accounting Standards Administration

970.3002 CAS program requirements.

970.3002-1 CAS applicability.

The provisions of 48 CFR part 30 and 48 CFR chapter 99 (FAR Appendix) shall be followed for management and operating contracts.

48 CFR Ch. 9 (10-1-11 Edition)

Subpart 970.31—Contract Cost Principles and Procedures

970.3101-00-70 Scope of subpart.

(a) The Senior Procurement Executive is responsible for developing and revising the policy and procedures for the determination of allowable costs reimbursable under a management and operating contract, and for coordination with other Headquarters’ offices having joint interests.

(b) The Head of the Contracting Activity is responsible for following the policy, principles and standards set forth in this subpart in establishing the compensation and reimbursement provisions of contracts and subcontracts and for submission of deviations for Headquarters consideration and approval.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36373, July 22, 2009]

970.3101-9 Advance agreements.

(i) At any time, in accordance with the contract terms and conditions, the contracting officer may pursue an advance agreement in connection with any cost item under a contract.

970.3101-10 Indirect cost rate certification and penalties on unallowable costs.

(a) Certain contracts require certification of the costs proposed for final payment purposes. Section 970.4207-03-02 states the administrative procedures for the certification provisions and the related contract clause prescription.

(b) If unallowable costs are included in final cost settlement proposals, penalties may be assessed. Section 970.4207-03-02 states the administrative procedures for penalty assessment provisions and the related clause prescription.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36373, July 22, 2009]

970.3102-3-70 Home office expenses.

(a) For on-site work, DOE’s fee for management and operating contracts, determined under the policy of and calculated per the procedures in 970.1504-1-3, generally provides adequate compensation for home or corporate office general and administrative expenses

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incurred in the general management of the contractor's business as a whole.

(1) DOE recognizes that some Home Office Expenses are incurred for the benefit of a management and operating contract. DOE has elected to recognize that benefit through fee due to the difficulty of determining the dollar value applicable to any management and operating contract. The difficulty arises because:

(i) The general construct of a management and operating contract results in minimal Home Office involvement in the contract work, and

(ii) Conventional Home Office Expense allocation techniques that use bases such as total operating costs, labor dollars, hours etc., are not appropriate because they inherently assume significant contractor investment (in terms of its own resources, such as, labor, material, overhead, etc.). Contractor investments are minimal under DOE's operating and management contracts. The contracts are totally financed by DOE advance payments, and DOE provides government-owned facilities, property, and other needed resources.

(2) From time to time, the fee for a management and operating contract may not be adequate compensation for Home Office Expenses incurred for the benefit of the contract. An indication that such a case exists is the need for significant home office support to deal with issues at the site that occur without the fault or negligence of the contractor, for example, the need for home office legal support to deal with third party, environmental, safety, or health issues.

(3) In such a case, the contracting officer, after obtaining the HCA's approval, may consider a contractor request for additional compensation. The contractor may request—

(i) Fee in addition to its normal fee (but see 970.1504-1-3(b)(1) if the contract is for the management and operation of a laboratory); or

(ii) Compensation on the basis of actual cost.

(4) Because the contract's fee provides some compensation for Home Office Expenses, the contractor's request for additional compensation must always be for an amount less than the

Home Office Expenses that are incurred for the benefit of the management and operating contract.

(b) For off-site work, the DOE allows Home Office Expenses under architect-engineer, supply and research contracts with commercial contractors performing the work in their own facilities. Home Office Expenses may, however, be included for reimbursement under such DOE off-site architect-engineer, supply and research contracts, only to the extent that they are determined, after careful examination, to be allowable, reasonable, and properly allocable to the work. Work performed in a contractor's own facilities under a management and operating or construction contract may likewise be allowed to bear the properly allocable portion of allowable Home Office Expenses.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36373, July 22, 2009]

970.3102-05 Selected costs.

970.3102-05-4 Bonding costs.

(d) The allowability of bonding costs shall be determined pursuant to 970.5228-1, Insurance-litigation and claims.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36373, July 22, 2009]

970.3102-05-6 Compensation for personal services.

(a)(6) In determining the reasonableness of compensation, the compensation of each individual contractor employee normally need not be subjected to review and approval. Generally, the compensation paid individual employees should be left to the judgment of contractors subject to the limitations of DOE-approved compensation policies, programs, classification systems, and schedules, and amounts of money authorized for wage and salary increases for groups of employees. However, the contracting officer shall designate a compensation threshold appropriate for the particular situation. The contract shall specifically provide that contracting officer approval is required for compensating an individual contractor employee above the threshold if a total of 50 percent or more of such compensation is reimbursed under DOE